

22 February 2024.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6700 OF 2005

Shri. Abdusslam Kamroddin Shaikh

...PETITIONER

V/S.

The Divisional Controller, M.S.R.T.C.
Corporation, Nashik

...RESPONDENTS

*Mr. Prathamesh Seth i/by. Mr. Joseph B. Fernandes, for the
Petitioner.*

Ms. Pinky Mohanlal Bhansali, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

DATED : 22 FEBRUARY 2024.

ORAL JUDGMENT:

1. By this petition, Petitioner challenges the Order dated 7 June 2005 passed by the Member, Industrial Court, Nashik holding that Complaint (ULP) No.14 of 2022 filed by the Petitioner

22 February 2024.

challenging the penalty imposed on him in the domestic enquiry is not maintainable. Petitioner's voluntary act in accepting the Order of reappointment dated 15 May 2001 and joining duties without a demur is the reason why his Complaint was held to be not maintainable.

2. The Petitioner was visited with the punishment of dismissal from service by Order dated 16 March 2000 on the charge of remaining unauthorisedly absent for 76 days from February 1998 to August 1998. He preferred Appeal before the first Appellate Authority against the order of dismissal. Petitioner pleaded that he was suffering from typhoid and his mother was unwell. The first Appellate Authority took note of the reasons cited by the Petitioner for his unauthorized absence. The first Appellate Authority held that Petitioner ought to have sought prior leave before remaining absent. The first Appellate Authority held Petitioner to be guilty of negligence. However, considering the period of absence, the first Appellate Authority proceeded to take a sympathetic view in the case and set aside the penalty of dismissal from service and directed Petitioner's re-appointment on his original post. Accordingly, the Order dated 15 May 2001 was issued reappointing Petitioner in the service of the S.T. Corporation. After receipt of the Order dated 15 May 2001, Petitioner joined the services on 29 May 2001. He did not protest while joining services on 29 May 2001.

22 February 2024.

3. It is claimed that subsequently, Petitioner submitted protest letter dated 15 June 2001 stating that he had joined services without prejudice to his right to challenge the order of the first Appellate Authority. He preferred Second Appeal, which came to be rejected by Order dated 15 January 2002. He thereafter approached the Industrial Court by filing Complaint (ULP) No. 14 of 2002 which is held to be not maintainable by the Industrial Court. Aggrieved by the decision of the Industrial Court dated 17 June 2005, the Petitioner has filed the present petition. This Court has admitted the petition by Order dated 6 October 2005.

4. I have heard Mr. Seth, the learned counsel appearing for the Petitioner and Ms. Bhansali, the learned counsel appearing for the Respondent-Corporation.

5. After having considered the submissions canvassed by the learned counsel appearing for the parties and after having gone through the records of the case, as well as the order of the Industrial Court, it is seen that the Petitioner faced the charge of remaining unauthorisedly absent for 74 days during February 1998 to August 1998. The chargesheet was served on him on 17 August 1998. Perusal of the charge would indicate that Petitioner intermittently remained absence almost every month from February 1998 to August 1998. Petitioner denied the charges by his representation dated 10 September 1998 contending that his absence on several days was regularized by leave. He vaguely stated he had submitted

22 February 2024.

applications for leave on some of the occasions but some of the applications were not accepted because of lack of enough leave in his account. He also contended that after joining the Depot in January 1998, he suffered from Typhoid in February and was on leave from 9 days in February 1998. In March 1998, he remained absent for 14 days and the reason pleaded by him for absence in March 1998 was his father's death anniversary. This is how vague explanation was given by the Petitioner to justify his absence during February 1998 to August 1998.

6. In the domestic enquiry, Petitioner pleaded on 18 July 2000 that sympathetic view be taken and assured that he would be more careful in future. The charge was held to be proved in the enquiry and punishment of dismissal from service was imposed on 18 November 2000.

7. Petitioner has not placed on record copy of the First Appeal preferred by him and therefore the exact plea raised by him in the appeal is unknown. The first Appellate authority however took a sympathetic view and decided to give him fresh appointment by Order dated 15 May 2001. Petitioner is an educated person. He knew exactly the effect of the Order dated 15 May 2001. It was a fresh appointment by wiping out the earlier service. Petitioner however joined in pursuance of the Order dated 15 May 2001 on 29 May 2001 without any protest. It is only on 15 June 2001 Petitioner allegedly addressed a letter that he had joined without prejudice to

22 February 2024.

his rights. Though that letter is of vital importance to the case of the Petitioner, the same is not placed on record alongwith the petition. An additional affidavit is tendered today which is affirmed on 4 October 2023. With that Affidavit also, the said letter dated 15 June 2001 is not placed on record. I am therefore unable to know the exact contents of the letter dated 15 June 2001. Be that as it may. Even if it is assumed that Petitioner stated in his letter dated 15 June 2001 that he had joined duties without prejudice to his rights, in my view, the said letter would be inconsequential and afterthought. The fact still remains that Petitioner accepted fresh appointment offered to him and joined services without demur. His subsequent change of mind in the form of addressing letter dated 15 June 2001 would not change the position of acceptance of fresh appointment without any demur. In my view, therefore considering the peculiar facts and circumstances of the case, the Industrial Court has rightly held that the Petitioner cannot subsequently turn around and challenge the fresh appointment offered to him. No serious flaw can be found in the order passed by the Industrial Court.

8. I am informed that Petitioner has already retired from service on attaining the age of superannuation. This is yet another fact why no purpose would be served in holding the complaint as maintainable and permitting the Petitioner to prosecute the complaint at such a belated stage. Petitioner joined the services of ST Corporation in pursuance of the Order dated 15 May 2001

22 February 2024.

without expressing any reservation and he cannot subsequently take a volte face and challenge the very order in pursuance of which he joined the services. Considering the peculiar facts and circumstances of the case, I am not inclined to permit the Petitioner to prosecute the complaint both on account of his conduct as well as passage of long time of 22 years.

9. I therefore do not find any merit in the petition. The Writ Petition is accordingly **dismissed**. Rule is discharged.

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SANDEEP V. MARNE, J.